In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 1908 of 2005 (O&M)
Date of Decision: March 14, 2011

Beant Singh

---Petitioner

versus

State of Haryana

---Respondent

Coram: HONBLE MR. JUSTICE GURDEV SINGH

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Present: Mr.G.S.Sidhu, Advocate,
for the petitioner

Mr.Shekhar Mudgal, Asstt. Advocate General, Haryana

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GURDEV SINGH, J.

The petitioner-accused, Beant Singh, was charged for the offence under Section 379 IPC read with Section 39, 39-A of the Indian Electricity Act, 1910(hereinafter referred to as "the Act"). He was tried by Judicial Magistrate Ist Class, Sirsa, and was convicted for the offence under Section 39 of the Act, vide judgment dated 19.4.2002 and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹ 1000/- and in default thereof to undergo further simple imprisonment for a period of

two months. Against that conviction and sentence, the accused preferred appeal which was dismissed by Additional Sessions Judge, Sirsa, vide judgment dated 5.9.2005. Now, he has come up with the present revision against that conviction and sentence.

The accused had his tube well in village Nagrana Ther. On 4.5.1998, at about 4.45 p.m. that tube well was checked by the party of the Haryana State Electricity Board (hereinafter referred to as "the Board") consisting of Kalu Ram, Junior Engineer, PW-1, M.C.Gandhi, Junior Engineer, PW-2, Om Parkash, Line Man, and Baru Ram, Line Man. They found that the tube well was being run by the accused after the commission of theft of electric energy from the L.T.Line of the Board with the help of three cables of the length of 3 meters each. Those pieces of the cables were removed by the Junior Engineer and he imposed a fine of ₹ 16, 875/- upon the accused for committing the theft of electric energy. He submitted his report, Ex. PW-3/A to the S.D.O., who gave written application, Ex. PW3/B, to the Officer-in-charge, Police Station, Rania, and on the basis thereof, FIR Ex. PW4/B, was recorded against the accused. Investigation was conducted by Mian Singh, HC, PW-4, who went to the place of occurrence and after inspecting the same prepared the rough site plan, Ex. PW4/A. The electric cables were produced before him by the Junior Engineer and those were taken into possession, vide Memo Ex. P.A. In the course of investigation, the accused was arrested and on completion thereof, challan was put in before Judicial Magistrate Ist Class, Sirsa.

To prove the guilt of the accused, prosecution examined Kalu Ram, PW-1, M.C.Gandhi, PW-2, O.P.Saluja, PW-3 and Mian Singh, PW-4. After the prosecution closed its evidence, the accused was examined and his statement was recorded under Section 313 Cr.P.C. The incriminating circumstances appearing against him in the prosecution evidence were put to

him in order to enable him to explain the same. He denied all those circumstances. He stated that SDO was asking for a share of the produce and on his refusal, this false case was got lodged against him. He was called upon to enter on his defence. He did not produce any evidence in his defence.

I have heard learned counsel for both the sides.

It has been submitted by the counsel for the accused that the accused was never arrested at the spot and the evidence produced by the prosecution about his presence at that time is contradictory. Therefore, it cannot be said that it was the accused, who was stealing the energy. No evidence was collected by the prosecution regarding the ownership of the tube well where the theft of electric energy is stated to have been committed. The cables were never produced in the court, for which an adverse inference is to be drawn against the prosecution. The conviction of the accused could not have been recorded on the basis of the statements of the official witnesses in the absence of any independent corroboration. In the last, he has submitted that the prosecution was never validly launched and the SDO was not competent to launch the same. Therefore, the Judicial Magistrate could not have taken the cognizance of the offence in the absence of the launching of the prosecution by the duly authorized person.

On the other hand, it has been submitted by the State counsel that SDO of the Board was competent to launch the prosecution on behalf of the Board, who is one of the person mentioned in Section 50 of the Act. The mere non-production of the case property, is no ground for ignoring the other evidence produced on the record by the prosecution. It stands proved from the statements of the prosecution witnesses that the theft of the electric energy was being committed for running the tube well of the accused and no one else was interested in running tube well except the accused.

According to Section 50 of the Act, no prosecution shall be instituted against any person for any offence against the Act except at the instance of the Government or a State Electricity Board or Electrical Inspector or a person aggrieved by the same. In support of his arguments, counsel for the accused has tried to place reliance on the judgment of the Hon'ble SC reported in **AIR 1965 SC 666** (Avtar Singh vs. State of Punjab). In that case it was found that the prosecution was not launched by one of the person mentioned in Section 50 of the Act. That Section was amended after that judgment in the year 1986 and the State Electricity Board was added by means of amendment. It is very much clear from the application, Ex. PW3/B, made by SDO, that he was acting on behalf of the Board itself. Being an officer of the Board, he was competent to initiate the prosecution on behalf of the Board.

There is no dispute regarding the fact that the evidence produced by the prosecution about the presence of the accused at the spot is contradictory in itself. According to Kalu Ram, Junior Engineer, PW-1, the tube well was being run by the accused and on seeing the raiding party, he escaped from that place. He stands totally contradicted by M.C.Gandhi, PW-2, who stated in categorical terms that the accused was not present at the time, the raid was conducted and he even did not identify him in the Court at the time his statement was recorded. That may be so, but both these witnesses had made categorical statements that the theft was being committed for running the tube well of the accused. They also deposed as to in which manner the theft of the electric energy was being committed. Their statement, that it was the tube well of the accused, was never assailed during their cross examination. The re-appreciation of the statements is not permissible while exercising revisional jurisdiction. The statement of Kalu Ram, Junior Engineer, PW-1, stands corroborated by the report, Ex. PW4/A, proved on the record by

O.P.Saluja, SDO, PW-3. The production of the case property in the court would have been only corroborative piece evidence. The fact to be proved was the theft of electric energy at the time of the visit of the raiding party, which fact has been duly proved. There is no rule of law nor any rule of prudence that before placing reliance on the statements of the officials of the Board, those must be corroborated by independent witness. Insisting on such an independent corroboration will amount to disbelieving the official witnesses only on the ground of their official status, which is never the spirit of law. Rather, in such like cases more reliance is to be placed on the statements of the official witnesses, who are expert and only they can tell if there was any such theft of electric energy and the manner in which the same was being committed. The statements of the eye witnesses, examined by the prosecution, are in no way detracted merely on account of non-production of the case property in the court or non-supporting thereof by some independent evidence. There is no ground for setting aside the conviction of the accused recorded by the trial court and upheld by the appellate court.

It has also been submitted by the counsel for the accused that the accused has already undergone the sentence of imprisonment for a period of six months and in view of that, the sentence of imprisonment so imposed be reduced. However, according to the State counsel, the accused has undergone sentence only for a period of one month and 11 days. Keeping in view the protracted trial of the accused, the sentence of imprisonment so imposed upon him, is reduced from one year to six months subject to the deposit of fine, which was so imposed by the Board, for stealing the electric energy. In case of failure to deposit that fine with the Board within a period of three months from

the passing of this order, this revision petition shall be deemed to have been dismissed.

Records of the trial court be returned forthwith.

Petition stands disposed of accordingly.

(GURDEV SINGH)
JUDGE

March 14, 2011
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